

Appendix I--Management Decision Procedure to Convert Activities Not Subject to OMB Circular A-76

1. Activities with 11 or more Full-Time Equivalents desiring to change from in-house provision of services where A-76 does not apply or has been waived to contract will:

- a. Notify CNO (N4). The CNO (N4) will initiate required Congressional notification.
- b. Verify that the present organization's processes are efficient and effective.
- c. Conduct a cost/benefit analysis to determine advantages and disadvantages of contracting the function. This analysis must consider all costs required by 10 U.S.C. 2462. Activities will forward this analysis through their chain of command to CNO (N4). The CNO (N4) will forward this analysis through the Secretariat to the Committees on Appropriations of the House of Representatives and the Senate as required by law.
- d. Follow Federal Acquisition Regulations during source selection.

2. This method of converting a function with 11 or more FTEs to contract is a management decision. It is not appealable under OMB Circular A-76 Revised Supplemental Handbook (NOTAL), but is subject to FAR provision for protests.

3. References:

a. Title 10 U.S.C. 2462, Contracting for certain supplies and services required when cost is lower:

(a) In General. - Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive Order, or regulation) than the cost at which the Department can provide the same supply or service.

(b) Realistic and Fair Cost Comparisons. - For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense

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shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

b. FY 99 Defense Appropriations Act, Section 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 per centum Native American ownership.